

POST & SCHELL, P.C.  
BY: MARC H. PERRY, ESQUIRE  
E-MAIL: mperry@postschell.com  
I.D. # 68610  
FOUR PENN CENTER, 13TH FLOOR  
1600 JOHN F. KENNEDY BLVD.  
PHILADELPHIA, PA 19103-2808  
215-587-1000

CLARENCE FUNDENBERG,

Plaintiff,

v.

MARKET STREET CVS, INC., CVS  
PHARMACY, INC., MARKET 1044 L.L.C.,  
CVS HEALTH CORPORATION, and  
PENNSYLVANIA CVS PHARMACY,  
L.L.C.

Defendants.

ATTORNEYS FOR DEFENDANT,  
PENNSYLVANIA CVS PHARMACY,  
LLC.

IN THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT  
OF PENNSYLVANIA

**DEFENDANT, PENNSYLVANIA CVS PHARMACY, L.L.C.'S (IMPROPERLY NAMED  
AS MARKET STREET CVS, INC., CVS PHARMACY, AND INC. CVS HEALTH  
CORPORATION), PETITION FOR REMOVAL PURSUANT TO 28 U.S.C. §1332 AND  
U.S.C. §1441**

Defendant, Pennsylvania CVS Pharmacy, L.L.C. (improperly named as Market Street CVS, Inc., CVS Pharmacy Inc., and CVS Health Corporation), by and through its attorneys, Post & Schell, P.C., hereby petitions to remove the above-captioned action, which is presently in the Court of Common Pleas, Philadelphia County, December 2018 Term, No. 3535 pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441 *et seq.*, and in support thereof, avers as follows:

**I. NATURE OF ACTION**

1. This action arises out of an alleged slip and fall accident that occurred on January 13, 2017 outside a CVS store located in Philadelphia, PA. See a true and correct copy of Plaintiff's Complaint attached hereto as Exhibit "A."

2. Plaintiff is a resident of Pennsylvania with an address of 1922 Auth Street, Pennsylvania 19124. Id.

3. Co-Defendant, Market 1044 L.L.C. is a limited liability company with a business address of 275 Madison Avenue, NY. Id.

4. Defendant, Pennsylvania CVS Pharmacy, L.L.C. (CVS Pharmacy Inc. and Market Street CVS, Inc.<sup>1</sup>) is a Pennsylvania limited liability company with a business address of 1046 Market Street, Philadelphia, Pennsylvania. See Affidavit of Melanie K. Luker attached hereto as Exhibit “B.”

5. The sole member of Pennsylvania CVS Pharmacy, L.L.C. is CVS Pharmacy, Inc., who is also named as a defendant in this action. Id.

6. Defendant, CVS Pharmacy, Inc., is a foreign corporation with a principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895. Id.

7. Plaintiff alleges to have suffered “serious and permanent in nature, including, but not limited to disc injuries and/or exacerbation thereof, cervical sprain and strain, lumbar sprain and strain, right knee contusion, headaches, left shoulder sprain and strain, as well as other injuries as may be diagnosed by Plaintiff’s health care providers, all of which injuries have in the past, and may in the future, cause Plaintiff great pain and suffering.” “A” at ¶¶15. Plaintiff further alleges that as a result of the incident “Plaintiff has suffered medically determinable physical and/or mental impairment, which prevents the Plaintiff from performing all or substantially all of the material acts and duties that constituted the usual and customary activities prior to the incident.” “A” at ¶¶18. Plaintiff also alleges to have “suffered severe physical pain, mental anguish and humiliation, and may continue to suffer the same for an indefinite time in the

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<sup>1</sup> Market Street CVS, Inc. not an existing legal entity. See Exhibit “B.”

future”, in addition to “financial expenses, which do or may exceed amounts that Plaintiff may otherwise be entitled to recover. “A” at ¶¶18-20.

8. Pursuant to Pennsylvania pleading rules, Plaintiff has also asserted that the alleged damages are in excess of the \$50,000 jurisdictional limits of a Board of Arbitrators. See Exhibit “A.”

## **II. PROCEDURAL HISTORY**

9. On or about January 2, 2019 Plaintiff filed a Complaint in the Philadelphia County Court of Common Pleas. See Exhibit “A.”

10. The Complaint was served on Pennsylvania CVS Pharmacy, L.L.C. on January 5, 2019.

11. Pursuant to 28 U.S.C. § 1446(b)(2)(B), Defendants shall have thirty (30) days after service of the Complaint to file a notice of removal.

12. This notice of removal, and related papers, has been filed within thirty (30) days of the date of service of the Complaint on Defendants and is, therefore, timely under 28 U.S.C. § 1446(b).

## **III. LEGAL ARGUMENT**

### **A. THE ADVERSE PARTIES ARE COMPLETELY DIVERSE**

13. Pursuant to 28 U.S.C. § 1332, a matter may be removed to Federal Court based upon the diversity of citizenship of the parties.

14. Complete diversity of citizenship between the parties exists when “every plaintiff [is] of diverse state citizenship from every defendant.” In re Briscoe, 448 F.3d 201, 215 (3d Cir. 2006).

15. A corporation is considered to be a citizen of its state of incorporation and the state where it has its principal place of business. 28 U.S.C. § 1332(c).

16. Under the “nerve center” test adopted by the United States Supreme Court, a corporation’s principal place of business is the headquarters of the corporation, *i.e.* that “place where a corporation’s officers direct, control, and coordinate the corporation’s activities.” Hertz Corp. v. Friend, 559 U.S. 77, 92-93 (2010).

17. In addition, “the citizenship of an LLC is determined by the citizenship of each of its members.” Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 418 (3d Cir. 2010).

18. As stated above, as well as in the Complaint, Plaintiff is a resident of Pennsylvania.

19. Pennsylvania CVS Pharmacy, L.L.C.’s member is CVS Pharmacy, Inc. As the sole member of the LLC, the citizenship of CVS Pharmacy, Inc. (Rhode Island) is used to determine the citizenship of Pennsylvania CVS Pharmacy, L.L.C.

20. Further, Co-Defendant, Market 1044 L.L.C. is a limited liability company with a business address of 275 Madison Avenue, NY. Id.

19. As a result, there is complete diversity of citizenship between the Plaintiff (Pennsylvania), CVS Defendants (Rhode Island), and Co-Defendant (New York).

**B. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

20. Under 28 U.S.C. §1332(a), federal jurisdiction based on diversity of citizenship requires that the amount in controversy exceed \$75,000.

21. The amount in controversy is measured by the pecuniary value of the rights being litigated. Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 347, 53 L. Ed. 2d 383, 97 S. Ct. 2434 (1977).

22. “The amount in controversy is not measured by the low end of an open ended claim, but rather by a reasonable reading of the value of the rights being litigated.” Angus v. Shiley, Inc., 989 F.2d 142, 146 (3d Cir. 1993), citing Hunt v. Washington State Apple Advertising Comm’n., 432 U.S. 333, 347 (1977)[emphasis added].

23. The Court must find that the amount in controversy requirement has been satisfied when a reasonable jury could value the plaintiff’s losses at an amount above the jurisdictional minimum. Id.; see also Corwin Jeep Sales & Service v. American Motors Sales Corp., 670 F. Supp. 591, 596 (M.D. Pa. 1986) (finding amount in controversy requirement met when the court could not “find to a legal certainty that the parties’ respective rights under the franchise agreement are worth less than the jurisdictional minimum.”).

24. In this case, Plaintiff alleges to have suffered “serious and permanent in nature, including, but not limited to disc injuries and/or exacerbation thereof, cervical sprain and strain, lumbar sprain and strain, right knee contusion, headaches, left shoulder sprain and strain, as well as other injuries as may be diagnosed by Plaintiff’s health care providers, all of which injuries have in the past, and may in the future, cause Plaintiff great pain and suffering.” “A” at ¶¶15. Plaintiff further alleges that as a result of the incident “Plaintiff has suffered medically determinable physical and/or mental impairment, which prevents the Plaintiff from performing all or substantially all of the material acts and duties that constituted the usual and customary activities prior to the incident.” “A” at ¶¶18. Plaintiff also alleges to have “suffered severe physical pain, mental anguish and humiliation, and may continue to suffer the same for an indefinite time in the future”, in addition to “financial expenses, which do or may exceed amounts that Plaintiff may otherwise be entitled to recover.” “A” at ¶¶19-20.

25. Considering all of these items of claimed recoverable damages, while Defendants dispute Plaintiff's allegations, a reasonable jury could value Plaintiff's losses at an amount in excess of the \$75,000 minimum.

**IV. CONCLUSION**

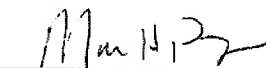
26. Therefore, with both the existence of diversity of citizenship between the parties and the amount of controversy threshold having been satisfied, removal is proper under 28 U.S.C. §§ 1332 and 1441.

**WHEREFORE**, Defendant, Pennsylvania CVS Pharmacy, L.L.C. (improperly named as Market Street CVS, Inc., CVS Pharmacy Inc., and CVS Health Corporation), respectfully requests that this Honorable Court find this case to have been properly removed and assume full jurisdiction of this matter.

Respectfully submitted,

**POST & SCHELL, P.C.**

**BY:**



MARC H. PERRY, ESQUIRE  
AARON L. DUNBAR, ESQUIRE  
Attorneys for DEFENDANTS

**DATED:** January 30, 2019

# **EXHIBIT “A”**

**CIVIL ACTION COMPLAINT**

**COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)

**DECEMBER 2018****003535**

E-Filing Number: 1901001543

PLAINTIFF'S NAME  
CLARENCE FUNDENBERG

DEFENDANT'S NAME  
MARKET STREET CVS INC.

PLAINTIFF'S ADDRESS  
1922 AUTH STREET  
PHILADELPHIA PA 19124

DEFENDANT'S ADDRESS  
ONE CVS DRIVE  
WOONSOCKET RI 02895

PLAINTIFF'S NAME

DEFENDANT'S NAME  
CVS PHARMACY, INC

PLAINTIFF'S ADDRESS

DEFENDANT'S ADDRESS  
ONE CVS DRIVE  
WOONSOCKET RI 02895

PLAINTIFF'S NAME

DEFENDANT'S NAME  
MARKET 1044 L.L.C.

PLAINTIFF'S ADDRESS

DEFENDANT'S ADDRESS  
275 MADISON AVENUE SUITE 702  
NEW YORK NY 10016

TOTAL NUMBER OF PLAINTIFFS

1

TOTAL NUMBER OF DEFENDANTS

5

COMMENCEMENT OF ACTION

☒ Complaint ☐ Petition Action ☐ Notice of Appeal  
☐ Writ of Summons ☐ Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY

☐ \$50,000.00 or less  
☒ More than \$50,000.00

COURT PROGRAMS

☐ Arbitration  
☒ Jury  
☐ Non-Jury  
☐ Other:

☐ Mass Tort  
☐ Savings Action  
☐ Petition

☐ Commerce  
☐ Minor Court Appeal  
☐ Statutory Appeals

☐ Settlement  
☐ Minors  
☐ W/D/Survival

CASE TYPE AND CODE

2S - PREMISES LIABILITY, SLIP/FALL

STATUTORY BASIS FOR CAUSE OF ACTION

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

**FILED  
PRO PROTHY  
JAN 02 2019  
M. BRYANT**

IS CASE SUBJECT TO  
COORDINATION ORDER?  
YES NO

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: CLARENCE FUNDENBERG

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY

KEITH W. KOFSKY

ADDRESS

1617 J.F.K. BLVD., #355  
PHILADELPHIA PA 19103

PHONE NUMBER

(215) 563-6333

FAX NUMBER

(215) 563-3580

SUPREME COURT IDENTIFICATION NO.

65725

E-MAIL ADDRESS

Kkofskylaw@gmail.com

SIGNATURE OF FILING ATTORNEY OR PARTY

KEITH KOFSKY

DATE SUBMITTED

Wednesday, January 02, 2019, 02:40 pm

FINAL COPY (Approved by the Prothonotary Clerk)



**COMPLETE LIST OF DEFENDANTS:**

1. MARKET STREET CVS INC.  
ONE CVS DRIVE  
WOONSOCKET RI 02895
2. CVS PHARMACY, INC  
ONE CVS DRIVE  
WOONSOCKET RI 02895
3. MARKET 1044 L.L.C.  
275 MADISON AVENUE SUITE 702  
NEW YORK NY 10016
4. CVS HEALTH CORPORATION  
ONE CVS DRIVE  
WOONSOCKET RI 02895
5. PENNSYLVANIA CVS PHARMACY, L.L.C.  
795 BALTIMORE PIKE  
SPRINGFIELD PA 19064

**THIS IS A MAJOR JURY MATTER.  
ASSESSMENT OF DAMAGES HEARING  
IS REQUIRED.**

Filed and Attested by the  
Attorney for Plaintiff Judicial Records  
02 JAN 2019 02:40 pm  
M. BRYANT  
JUDICIAL DISTRICT OF PHILADELPHIA

**CLEARFIELD & KOFISKY**  
By: Keith W. Kofsky, Esquire  
Identification No.: 65725  
One Penn Center at Suburban Station  
1617 JFK Boulevard, Suite 355  
Philadelphia, PA 19103  
(215) 563-6333

**CLARENCE FUNDENBERG**  
1922 Auth Street  
Philadelphia, PA 19124  
v.  
**MARKET STREET CVS, INC.**  
One CVS Drive  
Woonsocket, RI 02895  
and  
**CVS PHARMACY, INC.**  
One CVS Drive  
Woonsocket, RI 02895  
and  
**MARKET 1044 L.L.C.**  
275 Madison Avenue, Suite 702  
New York, NY 10016  
(continued on next page)

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**  
  
**JANUARY TERM, 2019**  
  
**NO.**

**COMPLAINT IN CIVIL ACTION**  
**(Code #2S - Premises Liability - Slip and Fall)**

**NOTICE**

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**PHILADELPHIA BAR ASSOCIATION  
LAWYER REFERRAL & INFORMATION SERVICE**  
One Reading Center  
Philadelphia, PA 19107  
(215) 238-1701

**AVISO**

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

**ASOCIACION DE LICENCIADOS DE FILADELPHIA  
SERVICIO DE REFERENCIA E INFORMACION LEGAL**  
One Reading Center  
Philadelphia, Penna. 19107  
(215) 238-1701  
Teléfono: (215) 238-1701

CVS HEALTH CORPORATION  
One CVS Drive  
Woonsocket, RI 02895  
and  
PENNSYLVANIA CVS PHARMACY, L.L.C.  
795 Baltimore Pike  
Springfield, PA 19064

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GENERAL AVERMENTS

1. Plaintiff, Clarence Fundenberg, is an adult individual who resides at the above-captioned address.
2. Defendant, Market Street CVS, Inc. is a corporation, licensed and authorized to conduct and transact business within the Commonwealth of Pennsylvania, with an office for service located at the above-captioned address.
3. Defendant, CVS Pharmacy, Inc. is a corporation, licensed and authorized to conduct and transact business within the Commonwealth of Pennsylvania, with an office for service located at the above-captioned address.
4. Defendant, Market 1044 LLC, is a Pennsylvania limited liability corporation, licensed and authorized to conduct and transact business within the Commonwealth of Pennsylvania, with an office for service located at the above-captioned address.
5. Defendant, CVS Health Corporation. is a Delaware corporation, licensed and authorized to conduct and transact business within the Commonwealth of Pennsylvania, with an office for service located at the above-captioned address.
6. Defendant, Pennsylvania CVS Pharmacy, L.L.C, is a Pennsylvania limited liability corporation existing and/or qualifying under the laws of the Commonwealth of Pennsylvania, with

a registered office for the acceptance of service or a principal place of business at the address listed in the caption of this Complaint.

7. At all times material hereto, Defendants did own, operate, manage, control, or possess the premises located at 1046 Market Street, Philadelphia, Pennsylvania.

8. At all times material hereto, Defendants acted or failed to act by and through their agents, servants, workmen and/or employees who were then and there acting within the scope of their authority and course of their employment with Defendants, in furtherance of Defendants' businesses and on behalf of Defendants.

9. On or about January 13, 2017, and for some time prior thereto, Defendants acting by and through their agents, servants, workmen and/or employees, acting as aforesaid, carelessly and negligently allowed the sales floor to be in a dangerous condition for an unreasonable period of time.

10. On or about January 13, 2017, Plaintiff, Clarence Fundenberg, was a business invitee at the aforesaid location.

11. Plaintiff was injured by reason of coming in contact with the aforementioned dangerous and defective condition at the aforesaid location, causing Plaintiff the injuries that form the basis for this action.

12. The aforesaid incident was due solely to the negligence and carelessness of the Defendants, acting as aforesaid, and was due in no manner whatsoever to any act or failure to act on the part of the Plaintiff.

COUNT I  
PLAINTIFF, CLARENCE FUNDENBERG v. ALL DEFENDANTS

13. Plaintiff, Clarence Fundenberg, incorporates by reference hereto, all of the allegations contained in the General Averments, as if they were set forth at length herein.
14. The negligence and carelessness of the Defendants, acting as aforesaid, consisted of the following:
- (a) allowing and causing a dangerous and defective condition to exist on the floor of the aisle at the aforesaid location, of which Defendants knew or should have known by the exercise of reasonable care;
  - (b) said dangerous condition created a reasonably foreseeable risk of the kind of injuries which Plaintiff sustained;
  - (c) Defendants knew or should have known of the existence of said dangerous condition;
  - (d) failing to give warning or notice of the defective condition;
  - (e) failing to inspect, repair and/or maintain the floors;
  - (f) failing to remove the aforesaid defective and dangerous condition;
  - (g) failing to provide Plaintiff with a safe and adequate passageway;
  - (h) permitting a highly dangerous condition to exist for an unreasonable length of time;
  - (i) failing to perform duties which were assumed;
  - (j) failing to use due care under the circumstances;
  - (k) failing to otherwise maintain the premises in a safe way;
  - (l) failing to stock at appropriate times;

- (m) failing to shut down the aisle during or after stocking activities have commenced;
- (n) failing to maintain the carpet such that it did not bunch up;
- (o) permitting the floor beneath the carpet to be unlevel;
- (p) failing to ensure that merchandise was not permitted to remain on the floor;
- (q) permitting a slippery product to remain on the floor;
- (r) negligence per se;
- (s) failing to comply with and/or enforce provisions of the applicable lease agreement;
- (t) violation of the Philadelphia Property Maintenance Code;
- (u) in being otherwise careless, and negligent, the particulars of which are presently unknown to Plaintiff, but which may be learned by discovery procedures provided by the Pennsylvania Rules of Civil Procedure or which may be learned at the trial of this case.

15. As a direct result of this incident, Plaintiff, Clarence Fundenberg, has suffered injuries which are or may be serious and permanent in nature, including, but not limited to the following injuries: disc injuries and/or exacerbation thereof, cervical sprain and strain, lumbar sprain and strain, right knee contusion, headaches, left shoulder sprain and strain, as well as other injuries as may be diagnosed by Plaintiff's health care providers, all of which injuries have in the past, and may in the future, cause Plaintiff great pain and suffering.

16. As a further result of this incident, Plaintiff, Clarence Fundenberg, has been or will be required to receive and undergo medical attention and care and to expend various sums of money and to incur various expenses, and may be required to continue to expend such sums or incur such expenditures for an indefinite time in the future.



17. As a further result of this incident, Plaintiff, Clarence Fundenberg, has or may hereafter suffer a severe loss of earnings and impairment of earning power and capacity.

18. As a further result of this incident, Plaintiff, Clarence Fundenberg, has suffered medically determinable physical and/or mental impairment, which prevents the Plaintiff from performing all or substantially all of the material acts and duties that constituted the Plaintiff's usual and customary activities prior to the incident.

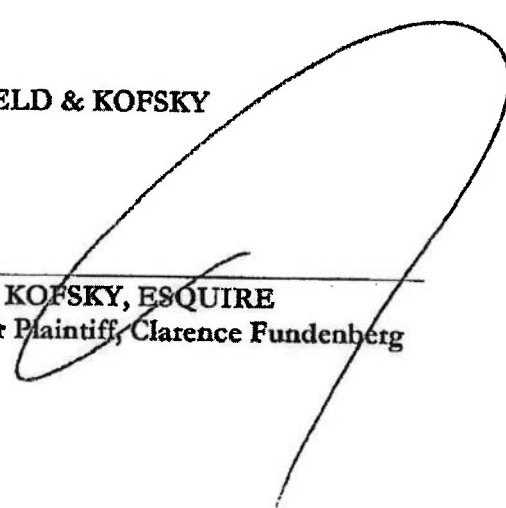
19. As a direct and reasonable result of the aforementioned incident, Plaintiff, Clarence Fundenberg, has or may hereafter incur other financial expenses, which do or may exceed amounts that Plaintiff may otherwise be entitled to recover.

20. As a further result of the aforementioned incident, Plaintiff, Clarence Fundenberg, has suffered severe physical pain, mental anguish and humiliation, and may continue to suffer same for an indefinite time in the future.

**WHEREFORE**, Plaintiff, Clarence Fundenberg, demands judgment against the Defendants, jointly and/or severally, for damages, in an amount not in excess of the arbitration limits, plus interest and costs.

**CLEARFIELD & KOFSKY**

**BY:**

  
\_\_\_\_\_  
**KEITH W. KOFSKY, ESQUIRE**  
Attorney for Plaintiff, Clarence Fundenberg

17. As a further result of this incident, Plaintiff, Clarence Fundenberg, has or may hereafter suffer a severe loss of earnings and impairment of earning power and capacity.

18. As a further result of this incident, Plaintiff, Clarence Fundenberg, has suffered medically determinable physical and/or mental impairment, which prevents the Plaintiff from performing all or substantially all of the material acts and duties that constituted the Plaintiff's usual and customary activities prior to the incident.

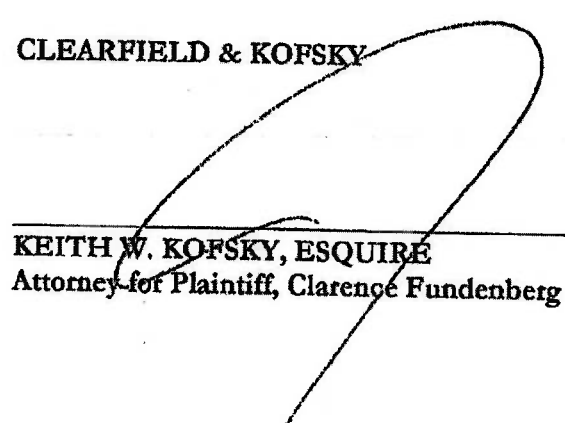
19. As a direct and reasonable result of the aforementioned incident, Plaintiff, Clarence Fundenberg, has or may hereafter incur other financial expenses, which do or may exceed amounts that Plaintiff may otherwise be entitled to recover.

20. As a further result of the aforementioned incident, Plaintiff, Clarence Fundenberg, has suffered severe physical pain, mental anguish and humiliation, and may continue to suffer same for an indefinite time in the future.

**WHEREFORE**, Plaintiff, Clarence Fundenberg, demands judgment against the Defendants, jointly and/or severally, for damages, in an amount in excess of the arbitration limits, plus interest and costs.

**CLEARFIELD & KOFKY**

BY:

  
**KEITH W. KOFKY, ESQUIRE**  
Attorney for Plaintiff, Clarence Fundenberg



VERIFICATION

I, Clarence Funderberg hereby verify that I am the  
plaintiff in the attached Civil Action, and  
that the facts set forth herein are true and correct to the best of my knowledge,  
information and belief. I understand that false statements made herein are subject  
to the penalties of the 18 PA C.S. §4904, relating to unsworn falsification to  
authorities.

NAME

ADDRESS

DATE

# **EXHIBIT “B”**

**AFFIDAVIT OF MELANIE K. LUKER**

CLARENCE FUNDENBERG,

Plaintiff,

v.

MARKET STREET CVS, INC., CVS  
PHARMACY, INC., MARKET 1044 L.L.C.,  
CVS HEALTH CORPORATION, and  
PENNSYLVANIA CVS PHARMACY,  
L.L.C.

Defendants.

IN THE UNITED STATES DISTRICT  
COURT FOR THE EASTERN DISTRICT  
OF PENNSYLVANIA

AFFIDAVIT OF MELANIE K. LUKER

BEFORE ME, the undersigned Notary, on this day personally appeared Melanie K. Luker, and being by me first duly sworn, on her oath, states as follows:

1. My name is Melanie K. Luker, I am over the age of twenty-one and have personal knowledge of the information set forth in this Affidavit. This Affidavit is submitted in support of Defendants Pennsylvania CVS Pharmacy, L.L.C. (improperly named as CVS Pharmacy, Store 1064) and CVS Pharmacy, Inc.'s Petition for Removal.


2. I am a Sr. Manager and Assistant Secretary of CVS Pharmacy, Inc.

3. At the time of the incident alleged in the Complaint, and presently, CVS Pharmacy, Inc. is a foreign corporation with its principal place of business located at One CVS Drive, Woonsocket, Rhode Island 02895.

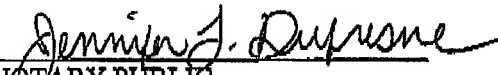
4. Pennsylvania CVS Pharmacy, L.L.C. is a Pennsylvania limited liability company with a business address of 1826 Chestnut Street, Philadelphia, Pennsylvania.

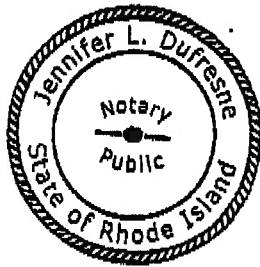
5. CVS Pharmacy, Inc. is the sole member of Pennsylvania CVS Pharmacy, L.L.C.

6. "CVS Pharmacy, Store 1064" is not an existing legal entity.

  
MELANIE K. LUKER

Sworn to before me this  
30<sup>th</sup> the day of JANUARY, 2018

  
NOTARY PUBLIC



Jennifer L. Dufresne  
Notary Public  
State of Rhode Island  
My Commission Expires 02/13/2022

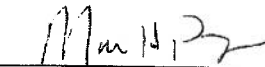
**CERTIFICATE OF SERVICE**

MARC H. PERRY, ESQUIRE hereby states that a true and correct copy of the foregoing Petition for Removal to be electronically filed with the Court and served upon counsel of record.

**POST & SCHELL, P.C.**

**DATED:** January 30, 2019

**BY:**



---

MARC H. PERRY, ESQUIRE  
AARON L. DUNBAR, ESQUIRE  
Attorneys for DEFENDANTS